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**IN THE  
COURT OF APPEALS OF INDIANA**

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TAMEKA CATHEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0609-CR-494
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Barbara Collins, Judge  
Cause No. 49F08-0604-CM-64426

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**April 27, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Tameka Cathey (Cathey), appeals her conviction of disorderly conduct, as a Class B misdemeanor, Ind. Code § 35-45-1-3.

We affirm.

## ISSUE

Cathey raises one issue on appeal, which we restate as: Whether the trial court denied her the right of allocution guaranteed under Article I, Section 13 of the Indiana Constitution.

## FACTS AND PROCEDURAL HISTORY

On April 9, 2006,<sup>1</sup> the Indianapolis Police Department (IPD) was called three times to 1931 Glen Ridge Drive as a result of a street fight involving nearly thirty people. The fighting began when an altercation arose between Cathey and Chernika Coe (Coe), who both have children fathered by Damian Brodie (Brodie). Problems between Cathey and Coe had existed since Cathey and Brodie were engaged to be married in the fall of 2004.

As a result of the fighting, on April 10, 2006, the State filed an Information charging Cathey with battery, as a Class A misdemeanor, I.C. § 35-42-2-1. On May 11, 2006, the trial court granted the State's motion to amend the Information to reflect an additional charge of disorderly conduct, as a Class B misdemeanor, I.C. § 35-45-1-3. On June 29 and 30, 2006, the trial court held a bench trial including Cathey and three co-

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<sup>1</sup> We note that in a companion Memorandum Decision to this case, the Facts and Procedural History indicated that the events leading to the charges against Cathey took place on April 6, 2006. However, upon closer review, we have determined that the events actually took place on April 9, 2006.

defendants. At the conclusion of the evidence, the trial court found Cathey and all co-defendants guilty of disorderly conduct, but not battery. Also on June 30, 2006, the trial court sentenced Cathey to 180 days in Community Corrections.

Cathey now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Cathey claims that the trial court did not give her an opportunity to make a statement prior to sentencing, and thus denied her the right of allocution under Article I, Section 13 of the Indiana Constitution. Article I, Section 13 of our Constitution provides in part: “In all criminal prosecutions, the accused shall have the right . . . to be heard by himself and counsel.” The purpose of this right of allocution is to give the trial court the opportunity to consider the facts and circumstances relevant to the sentencing of the defendant in the case before it. *Vicory v. State*, 802 N.E.2d 426, 429 (Ind. 2004). “When the defendant is given the opportunity to explain his view of the facts and circumstances, the purpose of the right of allocution has been accomplished.” *Id.* at 430.

In addition, it has been held that the Indiana Constitution “places a unique value upon the desire of an individual accused of a crime to speak out personally in the courtroom and state what in his mind constitutes a predicate for his innocence of the charges.” *Id.* at 429 (quoting *Sanchez v. State*, 749 N.E.2d 509, 520 (Ind. 2001)). “The right of allocution is minimally invasive of the sentencing proceeding; the requirement of providing the defendant a few moments of court time is slight.” *Id.* (quoting *U.S. v. Barnes*, 948 F.2d 325, 331 (7<sup>th</sup> Cir. 1991)). Nevertheless, “[A] defendant claiming that

he was denied his right to allocution carries a strong burden in establishing his claim.”

*Id.*

Further, the right of allocution is codified in I.C. § 35-38-1-5, which provides in relevant part:

The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement personally in the defendant’s own behalf and, before pronouncing sentence, the court shall ask the defendant whether the defendant wishes to make such a statement.

Here, our review of the record reflects the following statements by the trial court prior to and during the sentencing of Cathey and her co-defendants:

[TRIAL COURT]: Okay. I want you guys to line up the way you were originally. Ms. Bonds [(co-defendant)], Mr. Brodie [(co-defendant)], [] Cathey, and Ms. Rodgers [(co-defendant)]. . . . I’m going to go through each of these and then I’ll go back and deal with sentencing. . . . As to [Cathey,] not guilty of battery, guilty of disorderly conduct. . . . I think both sides have a little bit [of a] misconception of what self-defense is. I’m not making the decision on self-defense. I’m making the decision on that it was mutual fighting and we can’t really figure out who did what when. With that, let me deal with and make some notes . . . All of you have a right to appeal. You must do that within thirty days. If you don’t do it, some of those rights may be waived. Ms. Bonds, I am imposing a sentence of 180 days, zero suspended, 180 days executed in Community Corrections in a component deemed appropriate by Community Corrections. . . .

\* \* \*

[TRIAL COURT]: They’re going to be pretty much the same, except Mr. Brodie has a lot more credit than the rest of them. It’s my intent that they will not be free on the streets to gather in a crowd or to initiate confrontation. I will review this in thirty days as I usually do with Community Corrections. And I will consider potentially some modifications, not in thirty days[,] but in ninety days depending on the behavior. Their liberty will be constrained period.

(Transcript pp. 141-42).

In reviewing the trial court's comments, we agree with Cathey that no apparent opportunity was afforded to the defendants to make a statement prior to sentencing. In fact, the record reveals that co-defendant, Bonds, is the only defendant the trial court directly addressed in pronouncing a sentence. However, we also find no objection by Cathey in the record as to this issue. This court has observed that a defendant's failure to timely object to such an alleged error constitutes a waiver, and thus the cause will not be remanded for resentencing. *Robles v. State*, 705 N.E.2d 183, 187 (Ind. Ct. App. 1998). In addition, we have held that a party may not sit idly by, permit the court to act in a purported erroneous fashion, and then attempt to take advantage of the asserted error at a later time. *Id.* Moreover, in the instant case, Cathey also fails to provide this court with any information as to the content of any statement that she may have wished to make before the trial court sentenced her. *See id.* Thus, we cannot determine how a statement by Cathey would have benefited her. *See id.* For these reasons, we conclude that the trial court did not deny Cathey her right of allocution. Rather, we find that Cathey failed to take the opportunity to exercise such a right by not timely bringing the error to the trial court's attention.

### CONCLUSION

Based on the foregoing, we conclude that the trial court did not deny Cathey her right of allocution as guaranteed under Article I, Section 13 of the Indiana Constitution.

Affirmed.

BARNES, J., and NAJAM, J., concur.